

10-31-2013

## Used Vehicles. Buyer Protection. Initiative Statute.

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October 24, 2013

**VIA MESSENGER**

Office of the Attorney General  
1300 "I" Street, 17th Floor  
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

**RECEIVED**

**OCT 31 2013**

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Re: *Car Buyers Protection Act – Version 4*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of Version 4 of the initiative measure entitled the "Car Buyers Protection Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

James C. Harrison  
Margaret R. Prinzing  
Remcho, Johansen & Purcell, LLP  
201 Dolores Avenue  
San Leandro, CA 94577  
Phone: (510) 346-6200  
Fax: (510) 346-6201

Sincerely,

  
Rosemary Shahan

Enclosures

## CAR BUYERS PROTECTION ACT

### SEC. 1. Title.

This act shall be known and may be cited as the “Car Buyers Protection Act.”

### SEC. 2. Findings and Declarations.

The people of the State of California find and declare as follows:

1. Federal law makes it illegal for new car dealers to sell unsafe, defective vehicles to *new* car buyers, after an auto manufacturer has issued a safety recall, until the safety recall repairs have been performed. However, there is no similar federal law to protect *used* car buyers from auto dealers who sell unsafe, recalled *used* vehicles.
2. Consumers who get used vehicles from auto dealers deserve the same protection from unsafe, recalled vehicles as consumers who get new cars. The public has a strong interest in ensuring that vehicles sold by auto dealers for operation on California highways comply with federal safety standards and do not pose an unreasonable risk to public safety.
3. In 2013, trade associations that represent new and used car dealers in California opposed legislation in Sacramento, SB 686, that would have made it illegal for them to sell, lease, rent, or loan unsafe, recalled used vehicles to consumers, unless the safety defects have been repaired.
4. Federal law requires auto manufacturers to provide the safety recall repairs for free to any owner, including auto dealers.
5. For years, it has been easy for auto dealers to find out if a specific used vehicle has an open, unrepaired safety recall that needs to be fixed prior to sale. That information is readily accessible online, or by calling the manufacturer’s toll-free number, or by contacting a local dealer who sells that brand, and providing the vehicle’s identification number (VIN).
6. Current law does not provide enough protection for victims of identity theft at car dealerships. There is no prohibition against auto dealers’ hiring employees who been convicted of identity theft, fraud, or forgery, for positions where they will have access to car buyers’ personal financial information.
7. Unscrupulous auto dealers’ practices hinder the ability of many car buyers to purchase newer, more fuel-efficient, safer vehicles, often trapping car buyers in a cycle of debt and depriving them and all Californians of the benefits of a cleaner, safer vehicle fleet.
8. Unscrupulous auto dealers often engage in “bait and switch” financing. They lure consumers into signing contracts on favorable terms. Then later, after the car buyer drives the

vehicle off the car lot, the dealer tricks the car buyer into coming back and paying more. If the consumer refuses to sign a different contract for the same vehicle, that would increase the amount the consumer has to pay, the dealers sometimes refuse to return the consumer's down payment or traded-in vehicle. Some dealers threaten to repossess the car, fail to submit registration documents to the Department of Motor Vehicles on time, or threaten to report the car as "stolen," if the consumer objects to paying more.

9. Auto dealers commonly charge car buyers an extra, hidden amount for a car loan. This added charge, called a dealer "markup," is usually split between the dealer and the lender who purchases the retail installment contract or loan from the dealer. The markup adds to the profits the dealers and lenders gain from increasing the interest rate consumers pay, above the rate car buyers qualify to get, based on their credit. According to the Center for Responsible Lending, in 2009, car dealer markups cost California car buyers over \$2.5 billion. The Center also found that the added markups increased the risk of falling behind on the loan payments.

10. Current law in California requires "buy here pay here" auto dealers to provide at least a 30-day / 1,000 mile warranty on every used car they offer for sale. However, other dealers who sell used cars, including higher-priced vehicles, are allowed to sell used vehicles without providing the same protection. Some other states mandate that all car dealers provide warranties on used vehicles, regardless whether or not the dealer is a "buy here pay here" dealer. California's used car buyers deserve to get at least a basic level of warranty protection, regardless of the type of dealer that is selling the car.

11. Many auto dealerships that sell vehicles in California are owned by dealership chains, some based in other states, that have annual revenue in the billions of dollars and are publicly traded on Wall Street.

### **SEC. 3. Purpose and Intent.**

The people of the State of California do hereby enact the Car Buyers Protection Act. This measure is intended to accomplish its purposes by protecting Californians who get new or used vehicles from licensed dealers, in the following ways:

1. Make it illegal for auto dealers to sell, rent, lease, loan, or otherwise transfer ownership of unsafe, recalled used cars to consumers, unless the safety recall repairs have been performed;
2. Improve protections for victims of identity theft perpetrated at car dealerships;
3. Reduce the risk of identity theft occurring at car dealerships;
4. Improve protections against "bait and switch" financing at car dealerships;
5. Prohibit dealer markups based on the interest rate or finance charges, which increase the cost of loans to consumers; and

6. Require all auto dealers to provide at least minimum 30-day / 1,000 mile warranty protection on all used cars.

**SEC. 4. Section 11713.27 is added to the Vehicle Code, to read:**

*11713.27. (a) Except for a rental company, as defined in Section 1936 of the Civil Code, a dealer issued a license under this article shall not rent, lease for an initial term of less than four months, loan, or otherwise transfer ownership at retail of a used vehicle, as defined in Section 665 and subject to registration under this code, including any used vehicle advertised as "certified" or any similar descriptive term, if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect or failure to comply with an applicable motor vehicle safety standard have been performed on the vehicle. The requirements of this section shall not apply to transfers or sales by a dealer to another dealer or to a manufacturer.*

*(b) For purposes of this section, a dealer is deemed to have knowledge of a manufacturer's safety recall if any of the following applies:*

*(1) The dealer receives notification of the manufacturer's safety recall pursuant to subdivision (b) or (c) of Section 30118 or Section 30119 of Title 49 of the United States Code.*

*(2) The dealer is a franchisee of the original manufacturer, or was a franchisee of the manufacturer at the time the manufacturer issued the notice about the safety recall.*

*(3) The manufacturer has made information about the manufacturer's safety recall regarding that specific vehicle available on the manufacturer's Internet website, searchable by Vehicle Identification Number, stating that the manufacturer's safety recall repairs have not been performed, prior to the sale, lease, loan, rental, or other transfer of ownership at retail of the vehicle.*

*(c) A "manufacturer's safety recall" means a recall issued pursuant to Section 30118 of the National Highway Traffic and Motor Vehicle Safety Act, 49 U.S.C. Sections 30101, et. seq. It does not include service campaigns or emissions recalls where the manufacturer has not issued a safety recall notice to owners of the affected vehicles, pursuant to Section 30118 of the National Highway Traffic and Motor Vehicle Safety Act, 49 U.S.C. Section 30101, et. seq.*

*(d) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.*

**SEC. 5. Section 11713.28 is added to the Vehicle Code, to read:**

*11713.28. (a) A rental company, as defined in Section 1936 of the Civil Code, that is also a dealer licensed under this article shall not sell or otherwise transfer ownership at retail of a used vehicle, as defined in Section 665 and subject to registration under this code, including any used vehicle advertised as "certified" or any similar descriptive term, if the rental company knows or should have known that the vehicle is subject to a manufacturer's safety recall, as defined in subdivision (c) of Section 11713.27, unless the repairs required to correct the defect or failure to comply with an applicable motor vehicle safety standard have been performed on the vehicle. The requirements of this section shall not apply to transfers or sales by a dealer to another dealer or to a manufacturer.*

*(b) For purposes of this section, a rental company is deemed to have knowledge of a manufacturer's safety recall if either of the following applies:*

*(1) The rental company receives notification of the manufacturer's safety recall pursuant to subdivision (b) or (c) of Section 30118 or Section 30119 of Title 49 of the United States Code.*

*(2) The manufacturer has made information about the manufacturer's safety recall regarding that specific vehicle available on the manufacturer's Internet website, searchable by Vehicle Identification Number, stating that the manufacturer's safety recall repairs have not been performed, prior to sale or other transfer of ownership at retail of the vehicle.*

*(c) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.*

**SEC. 6. Section 1798.98 is added to the Civil Code, to read:**

*1798.98. (a) If a transaction procured through identity theft relates to the sale or lease of a vehicle by a dealer, as defined in Vehicle Code Section 285, and the dealer has been paid in full, remains the creditor, or has assigned or sold the retail installment contract to a third party, a person may bring an action against the dealer, or may join the dealer in any action against the claimant.*

*(b) A person who proves that he or she is a victim of identity theft arising from the sale or lease of a vehicle by a dealer under this section, shall, in addition to all appropriate remedies against the claimant, be entitled to a judgment against the dealer providing all of the following, as appropriate:*



*(1) Actual damages, attorney's fees, and costs, and any equitable relief that the court deems appropriate. In order to recover actual damages or attorney's fees from the dealer, the victim shall show that he or she provided written notice to the dealer that a situation of identity theft might exist, including, upon written request of the dealer, a valid copy of the police report or the Department of Motor Vehicles investigative report promptly filed pursuant to Section 530.5 of the Penal Code at least 30 days prior to his or her filing of the action or cross-complaint pursuant to this section or Section 1798.93.*

*(2) A civil penalty, in addition to any other damages, of up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence all of the following:*

*(A) That at least 30 days prior to filing an action or the cross-complaint pursuant to this section or Section 1798.93, the victim provided written notice to the dealer that a situation of identity theft might exist and explaining the basis for that belief.*

*(B) That the dealer failed to diligently investigate the victim's notification of a possible identity theft.*

*(C) That after the dealer was presented with facts that were later held to entitle the victim to a judgment pursuant to this section or Section 1798.93, the dealer failed to notify the claimant that the victim's claim of identity theft was justified.*

*(3) A civil penalty, in addition to any other damages or penalty, of not less than five thousand dollars (\$5,000) and up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence that the dealer knowingly executed a sale or lease contract that resulted from identity theft. Such a dealer shall also be liable to the claimant for any damages resulting from the sale or lease, including all attorney's fees, costs, and expenses incurred by the claimant in relation to the identity theft.*

**SEC. 7. Section 11713.05 is added to the Vehicle Code, to read:**

*11713.05. (a) Notwithstanding any other provision of law, it is a violation of this code for the holder of a dealer's license issued under this article to do either of the following:*

*(1) Fail to check available criminal records for convictions, except convictions that have been judicially dismissed or ordered sealed pursuant to law, for identity theft, false impersonation, other fraud, or forgery prior to employing any person in a position where that person would have access to the personal identifying information of credit applicants, vehicle purchasers, or lessees.*

*(2) Employ a person in any position where that person would have access to the personal identifying information of credit applicants, vehicle purchasers, or lessees if the dealer knows or should have known that the person has been convicted of identity theft, false impersonation,*

*other fraud, or forgery, unless such conviction has been judicially dismissed or ordered sealed pursuant to law.*

*(b) For purposes of this section, "personal identifying information" means a person's name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number.*

**SEC. 8. Section 1670.8 is added to the Civil Code, to read:**

*1670.8. (a) Dealers, as defined in Section 285 of the Vehicle Code, are prohibited from including any provision in a contract for the purchase or lease of a vehicle that would allow the dealer to cancel the contract or change the terms after the buyer has signed the contract, and the buyer has taken delivery of the vehicle. After a buyer has signed a contract for the purchase or lease of a vehicle, and taken delivery of the vehicle, dealers are also prohibited from engaging in high-pressure tactics with the intent, in whole or in part, to induce the buyer to waive any rights conferred under this section, or sign a subsequent contract for the same vehicle that would increase the cost to the buyer. For purposes of this section, the term "high-pressure tactics" means any of the following:*

- (1) Threatening to repossess the vehicle;*
  - (2) Repossessing the vehicle when the buyer has not defaulted on the terms of the loan;*
  - (3) Threatening to report the vehicle as "stolen";*
  - (4) Reporting the vehicle as "stolen" by the buyer;*
  - (5) Failing to timely register the vehicle, subjecting the buyer to arrest for operating an unregistered vehicle;*
  - (6) Threatening to report, or reporting, a Member of the Armed Forces, as defined in Civil Code Section 1791, to his or her military command;*
  - (7) Threatening to affect, or affecting, the security clearance of a Member of the Armed Forces, as defined in Civil Code Section 1791; or*
  - (8) Engaging in any other tactic with the intent, in whole or in part, to induce the buyer into entering into a subsequent contract for the same vehicle with terms that would increase the cost to the buyer.*
- (b) After the buyer has signed a contract for the purchase or lease of a vehicle, the dealer shall accept payments from the buyer in accordance with the terms of the contract, unless the dealer previously assigned the contract to another entity for value.*



*(c) Nothing in this section limits or alters a dealer's remedies against the buyer when the buyer commits actual fraud, provided the fraud was not induced or aided and abetted by the dealer or the dealer's employees.*

*(d) Nothing in this section limits a dealer from agreeing to a buyer's request to rewrite the terms of a contract to reduce the cost to the buyer or provide other benefits to the buyer.*

**SEC. 9. Section 1795.51 of the Civil Code is amended to read:**

1795.51. (a) No ~~buy here-pay here~~ dealer, as that term is defined in Section 241285 of the Vehicle Code, shall sell or lease a used vehicle, as defined in Section 665 of the Vehicle Code, at retail price without giving the buyer or lessee a written warranty that shall have a minimum duration of at least 30 days from the date of delivery or when the odometer has registered 1,000 miles from what is shown on the contract, whichever occurs first.

(b) The written warranty shall provide that if the buyer or lessee notifies the ~~buy here-pay here~~ dealer that the vehicle does not conform to the written warranty, the ~~buy here-pay here~~ dealer shall either repair the vehicle to conform to the written warranty, reimburse the buyer or lessee for the reasonable cost of repairs, or cancel the sale or lease contract and provide the buyer or lessee with a full refund, less a reasonable amount for any damage sustained by the vehicle after the sale or lease, excepting damage caused by any nonconformity with the written warranty.

(c) The written warranty shall provide that the ~~buy here-pay here~~ dealer shall pay 100 percent of the cost of labor and parts for any repairs pursuant to the warranty, and may not charge the buyer or lessee for the cost of repairs or for inspecting the vehicle, tearing down the engine or transmission or other part, or for any deductible. Any person performing repairs pursuant to this subdivision shall comply with the requirements of an automotive repair dealer pursuant to Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code.

(d) The ~~buy here-pay here~~ dealer or its agent may elect to refund the buyer or lessee a full refund, less a reasonable amount for any damage sustained by the vehicle after the sale or lease, excepting damage caused by any nonconformity with the written warranty, rather than performing a repair. In the event that the ~~buy here-pay here~~ dealer cancels the sale or lease, all of the following shall apply:

(1) The ~~buy here-pay here~~ dealer shall give written notice to the buyer or lessee of the election to cancel the sale or lease by personal delivery or first-class mail.

(2) The buyer or lessee shall return the vehicle in substantially the same condition as when it was delivered by the ~~buy here-pay here~~ dealer, reasonable wear and tear and any nonconformity with the written warranty excepted.

(3) The ~~buy here-pay here~~ dealer shall provide the buyer or lessee with a receipt stating all of the following:

(A) The date the vehicle was returned to the ~~buy here-pay here~~ dealer.

(B) The vehicle identification number.

(C) The make, year, and model of the vehicle.

(D) The odometer reading at the time that the vehicle was returned to the ~~buy here-pay here~~ dealer.

(E) A statement that the ~~buy here-pay here~~ dealer has canceled the sale or lease.

(F) The amount of the buyer's or lessee's refund.

(4) The ~~buy here-pay here~~ dealer shall not treat the return of the vehicle pursuant to the contract cancellation provisions of this subdivision as a repossession.

(5) The buyer or lessee shall execute the documents necessary to transfer any interest in the vehicle to the ~~buy here-pay here~~ dealer or to remove the buyer or lessee from any registration or title documents.

(6) The ~~buy here-pay here~~ dealer shall refund to the buyer or lessee, no later than the day after the day on which the buyer or lessee returns the vehicle and the notice of election to cancel is given to the buyer or lessee, all amounts paid under the sale or lease agreement, less a reasonable amount for property damage sustained by the vehicle after the sale or lease, excepting damage caused by any nonconformity with the warranty.

(e) The written warranty shall cover at least the following components:

(1) Engine, including all internally lubricated parts.

(2) Transmission and transaxle.

(3) Front and rear wheel drive components.

(4) Engine cooling system.

(5) Alternator, generator, starter, and ignition system, not including the battery.

(6) Braking system.

(7) Front and rear suspension systems.

- (8) Steering system and components.
- (9) Seatbelts.
- (10) Inflatable restraint systems installed on the vehicle as originally manufactured.
- (11) Catalytic converter and other emissions components necessary for the vehicle to pass a California emissions test.
- (12) Heater.
- (13) Seals and gaskets on components described in this subdivision.
- (14) Electrical, electronic, and computer components, to the extent that those components substantially affect the functionality of other components described in this subdivision.
- (f) Any Used Car Buyer's Guide displayed on a vehicle offered for sale or lease by a ~~buy here-pay here~~ dealer shall list each of the above systems and components and shall specify that the ~~buy here-pay here~~ dealer will pay 100 percent of the cost of parts and labor for repairs covered by the warranty.
- (g) The ~~buy here-pay here~~ dealer shall make the repair or provide a refund notwithstanding the fact that the warranty period has expired if the buyer or lessee notified the ~~buy here-pay here~~ dealer of the failure of a covered system or part within the warranty period.
- (h) This section shall not apply to any defect or nonconformity caused by the unauthorized or unreasonable use of the vehicle following the sale, or to any property damage not to the vehicle arising out of the failure of a covered part.
- (i) In any proceeding in which the exclusion of coverage permitted by subdivision (h) or the deduction allowed by paragraph (6) of subdivision (d) is an issue, the ~~buy here-pay here~~ dealer shall have the burden of proof.
- (j) A ~~buy here-pay here~~ dealer shall not sell or lease any vehicle unless the vehicle meets all of the equipment requirements of Division 12 (commencing with Section 24000) of the Vehicle Code.
- (k) Any agreement between a ~~buy here-pay here~~ dealer and a buyer or lessee that disclaims, limits, or waives the rights set forth in this section shall be void as contrary to public policy.
- (l) If a ~~buy here-pay here~~ dealer fails to give a buyer a written warranty pursuant to this section, the ~~buy here-pay here~~ dealer shall be deemed to have provided the warranty as a matter of law.

**SEC. 10. Section 2982.10 of the Civil Code is amended to read:**

~~2982.10. (a) In consideration of the assignment of a conditional sale contract, the seller shall not receive or accept from the assignee any payment or credit based upon any amount collected or received, or to be collected or received, under the contract as a finance charge except to the extent the payment or credit does not exceed the amount that would be calculated in accordance with Regulation Z, whether or not Regulation Z applies to the contract, as the contract's finance charge using, for the purposes of the calculation, an annual percentage rate equal to 2.5 percent for a contract having an original scheduled term of 60 monthly payments or less or 2 percent for a contract having an original scheduled term of more than 60 monthly payments.~~

*Notwithstanding any other provision of law, in connection with the assignment of a conditional sale contract for a motor vehicle, no seller or employee of a seller shall accept, nor shall any purchaser of a conditional sale contract pay to any person or entity, compensation of any kind for arranging, assigning, or otherwise transferring the loan that varies based on the interest rate or other finance charges, or varies based on any other factor related to such interest rate or finance charges.*

(b) Subdivision (a) does not apply in the following circumstances:

- (1) An assignment that is with full recourse or under other terms requiring the seller to bear the entire risk of financial performance of the buyer.
- (2) An assignment that is more than six months following the date of the conditional sale contract.
- (3) Isolated instances resulting from bona fide errors that would otherwise constitute a violation of subdivision (a) if the seller maintains reasonable procedures to guard against any errors and promptly, upon notice of the error, remits to the assignee any consideration received in excess of that permitted by subdivision (a).
- (4) The assignment of a conditional sale contract involving the sale of a motorcycle, as defined in Section 400 of the Vehicle Code.
- (5) The assignment of a conditional sale contract involving the sale of an off-highway motor vehicle that is subject to identification under Section 38010 of the Vehicle Code.

**SEC. 11. Waiver.**

Any waiver of the provisions of this initiative is contrary to public policy, and is void and unenforceable.

**SEC. 12. Amendment.**

The provisions of this measure may be amended only to further the purposes of the initiative by a statute other than the annual budget act. Any such amendment must be passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

**SEC. 13. Severability.**

If any provision of this measure or its application to any person or circumstances shall be found to be unconstitutional or otherwise invalid, that finding shall not affect the other provisions or applications that can be given effect without the invalid provision or application, and to that extent the provisions of this measure are deemed to be severable.

**SEC. 14. Conflicting Initiatives.**

(a) In the event that this measure and another initiative measure or measures relating to motor vehicle consumers appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.